

VETERANS RIGHT TO POSSESS FIREARMS SHOULD NOT BE REVOKED WITHOUT JUDICIAL AUTHORITY AND ALL RIGHTS OF DUE PROCESS.

Testimony before the Law and Justice Interim Committee
February 13, 2014

It is both sad and ironic that the veterans' community, a community in which each and every member swore to uphold the Constitution of the United States to include the 2nd Amendment, requires advocacy to maintain its constitutional right to bear arms. Unless deemed unfit to possess weapons by a judicial authority with the full benefit of due process, each veteran regardless of disability should maintain the right to possess a firearm. Any constitutional right should engender this same expectation of careful scrutiny to ensure no right is removed without due process.

On December 2, 2012, NBC News published an article regarding veteran hunting trips as a form of therapy for combat hardened veterans. Throughout the nation, numerous organizations organize hunting trips for veterans. Even the Department of Veterans Affairs (VA) acknowledges the positive effects of shooting firearms for some veterans. Jose Llamas, community and public affairs officer for VA's National Veterans Sports Program, stated that hunting is included in a veteran's health-life plan. At various adaptive sports summits throughout the nation, veterans can enjoy target shooting. Additionally, a recent \$25,000 grant was made to the Grand Junction, Colorado, VA Medical Center, to purchase the necessary equipment for veterans to hunt.

Furthermore, there are concerns that the threat of being placed on a list that might deny them of their 2nd Amendment rights could act as a deterrent for veterans who might otherwise seek treatment. When the positive effects of therapy for conditions such as Post Traumatic Stress Disorder (PTSD) are so important, driving veterans away for fear of repercussions such as confiscation of firearms could only exacerbate existing stigmas.

During the 94th National Convention of The American Legion, Resolution 68 was passed. This resolution was directed to the U. S. congress and executive branch. According to the resolution, "The American Legion reaffirms its recognition that the Second Amendment to the Constitution of the United States guarantees each law-abiding American citizen the right to keep and bear arms; and, be it finally resolved, that the membership of The American Legion urges our nation's lawmakers to recognize, as part of their oaths of office, that the Second Amendment guarantees law-abiding citizens the right to keep and bear arms of their choice, as do the millions of American veterans who have fought, and continue to fight, to preserve those rights, hereby advise the Congress of the United States and the Executive Department to cease and desist any and all efforts to restrict this right by any legislation or order."

Law and Justice Meeting
February 13 , 2014

It is a great concern of The American Legion that a veteran's rights might be removed without judicial adjudication or protections provided through due process. In fact that very scenario plays out in the Department of Veterans Affairs (VA) system when a determination is made that a veteran needs a fiduciary. The VA has the authority to determine that a veteran who is unable to manage their financial affairs have a fiduciary appointed to manage their financial affairs for them. VA's own website states this can be done due to "injury, disease, or due to age." Once a determination of the need for a fiduciary is made, VA is required by law to report those veterans requiring a fiduciary to the FBI's National Instant Criminal Background Check System (NICS) and those veterans are then prohibited from owning firearms or having firearms in their residence.

The determination of the need for a fiduciary for a veteran is not made by a judge, but by a bureaucrat. While medical documentation supporting the decision is required, it is important to note this is not always a determination of mental incompetence, but of an inability for whatever reason to manage financial affairs. VA's own policies indicate it could be the result of any one of a combination of factors including age, illness or disease. Congressman Tim Walz (D-MN) went so far as to state "If financial incompetence was cause to take your guns away, nobody in Congress could hunt!" Once a veteran is placed on the list and *deprived of a constitutional right*, it is a long and difficult process to be removed from the list. Especially where constitutional rights are threatened, extra scrutiny must apply to ensure no rights are removed without proper due process.

I thank the Law and Justice Interim Committee for allowing a veteran perspective on the issue of gun control as related to mental health. During your planning stages I hope you will not only consider restrictions of firearms but, accept that therapy has been effective in dealing with many cases of mental disorder. Therefore, there must be a mechanism to restore to the veteran the 2nd amendment right to bear firearms.

MERVIN G. GUNDERSON
NATIONAL EXECUTIVE COMMITTEEMAN
THE AMERICAN LEGION, DEPT. OF MONTANA